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Supreme Court

of the

United States

CASE NO. 78-1809

RICHARD EUGENE PEREZ,
Petitioner,

vs.

DARLENE STEVENS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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in the

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of the

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CASE NO.

RICHARD EUGENE PEREZ,

Petitioner,

vs.

DARLENE STEVENS,

Respondent.

BRIEF ON APPEAL OR IN THE ALTERNATIVE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

Appellant-Petitioner, RICHARD EUGENE PEREZ, prays that this Court review by direct appeal or by Writ of Certiorari the judgment of the District Court of Appeals of Florida, Third District, entered in this case on September 26, 1978, rehearing denied October 20, 1978, and the judgment of the Florida Supreme Court denying Certiorari on March 23, 1979.

OPINION BELOW

The Opinion of the District Court of Appeals of Florida, Third District, is reported at 362 So.2d 998 and is printed in the Appendix.

The Opinion of the Florida Supreme Court is reported at and is printed in the Appendix.

JURISDICTION

The judgment of the District Court of Appeals of Florida, Third District, was rendered on September 26, 1978, rehearing denied on October 20, 1978.

The judgment of the Florida Supreme Court was rendered on March 23, 1979.

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257 under alternate theories.

Title 28 U.S.C. §1257(2) provides for a direct appeal in the case that a state statute's validity is upheld against the dictates of the United States Constitution.

Title 28 U.S.C. §1257(3) provides for a Writ of Certiorari when challenge is made to the validity of a state statute as being repugnant to the dictates of the United States Constitution.

QUESTION PRESENTED

WHETHER FLORIDA STATUTE §742.011 DEPRIVES A PUTATIVE FATHER EQUAL PROTECTION IF INTERPRETATED TO MEAN THAT A PATERNITY ACTION MAY BE INSTITUTED SOLELY BY THE WOMAN.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 7, 1977, a Petition for Final Judgment establishing the paternity of Allison Stevens was filed. On May 5, 1977, a Motion to Dismiss and/or Summary Judgment was filed by the Respondent. On November 15, 1977, the Court entered an Order on Respondent's Motion to Dismiss, dismissing the Complaint of the Petitioner with prejudice. An appeal to the District Court of Appeals of Florida, Third District, followed.

Opinion was rendered by the District Court of Appeals of Florida, Third District, on September 26, 1978, affirming the dismissal of Petitioner's cause of action. (See Appendix) Rehearing was denied by that Court on October 20, 1978. (See Appendix)

A Petition for Writ of Certiorari was filed in the Florida Supreme Court. Certiorari was denied by that Court on March 23, 1979. (See Appendix)

STATEMENT OF THE FACTS

Petitioner, RICHARD EUGENE PEREZ, caused to be filed on January 7, 1977, a Petition for Final Judgment establishing the paternity of Allison Stevens. In said Petition, he averred that he was the natural father of the unborn child, that the Respondent, DARLENE STEVENS, was the natural mother. It was alleged that the child had been born out of wedlock and that the Respondent had never married during the twelve (12) month period preceding the birth of the minor child. It was further alleged that the Petitioner had contributed toward the expenses of the birth of the minor child and that said contributions had been accepted by the Respondent and that the Respondent had acknowledged on several occasions the paternity of the Petitioner. The Respondent had filed a motion to dismiss which was heard by the Court on October 21, 1977. The Court, after hearing argumen' , engaged in the following colloquy:

> THE COURT: I am trying to see where you say the statute equates the reciprocal. I don't see it.
>
> MR. ENTIN: Well, Your honor, I gave you the name of a case that stated that. I think I have one or two other cases in our memorandum.
>
> THE COURT: That's after the mother says he's the father of the child.
>
> MR. ENTIN: In other words, what your Honor is saying essentially is that if the mother does

not say that so-and-so is the father of the child in any case, that she never admits that he's the father, that father never has rights to make a determination as to whether or not that child is his child. This is essentially what this Court is saying. If that's the case, I am not going to argue with the Court. Our remedy would be in the appellate level, but I don't think that the motion as presented —

THE COURT: Let's do it this way. Let the Appellate Court decide. I dismiss it with prejudice.

ISSUE ON APPEAL OR REASONS FOR GRANTING THE WRIT

FLORIDA STATUTE §742.011 WHICH AUTHORIZES THE COMMENCEMENT OF A PATERNITY ACTION SOLELY BY THE WOMAN IS A DENIAL OF EQUAL PROTECTION SO AS TO DENY THE ALLEGED FATHER FROM INSTITUTING THE ACTION.

The pending action was a suit initiated by a putative father for the purpose of determining paternity of an illegitimate child so that he might enjoy the benefits attendant thereto.

The District Court of Appeal of Florida, Third District, ruled that:

> In the instant case, Appellee claims that Appellant is the father of the child. We are unaware of any authority which gives a putative father a cause of action to establish that he is the father of a child who the mother denies is his. Chapter 742, Florida Statutes (1977), provides the jurisdictional basis for a court to determine paternity. No case interpreting this Chapter has gone so far as to read into it an intent to give such a cause of action to a putative father. Absent legislative revision of Chapter 742, a putative father is without the right to have himself declared the father of a child who the mother denies is his. *Ford v. Loeffler,* case number 78-325. (Fla. 3 DCA, Opinion filed Sept. 19, 1978).

The Petitioner would respectfully submit that such a limited interpretation of Florida Statute, Chapter 742, would render the statute unconstitutional in violation of the equal protection clauses of the United States and Florida Constitutions.

Florida Statute §742.011 provides, "Any unmarried woman who shall be pregnant or delivered of a child may bring proceedings in the Circuit Court, in Chancery, to determine the paternity of such child."

Said statute has been under judicial attack on numerous occasions for improperly limiting the cause of action only to "any unmarried woman." Such a limitation is in violation of the equal protection clauses of the United States and Florida constitutions. In particular, the Florida Supreme Court held in *Gammon v. Cobb*, 335 So.2d 261 (Fla. 1976) that:

> That portion of Section 742.011, Florida Statutes, which limits action thereunder to unmarried women to be unconstitutional in contravention of Article I, Section 2 of the Constitution of the State of Florida, and the Fourteenth Amendment to the Constitution of the United States. . . .

The *Gammon*, supra, decision recognized that for the purpose of determining the rights of individuals in relation to bastardy proceedings that there was no rational basis for distinguishing between unmarried and married women. It is equally true that there should be no rational basis between the right of women to have a cause of action for determining paternity and the right of a putative father to attempt to determine his rights.

It is generally accepted that a putative father does in fact enjoy certain rights and privileges as to his illegitimate child once paternity is established. For example, the Florida Supreme Court has recognized that the father of an illegitimate child has a cause of action for recovery of damages for the wrongful death of his child. *In Re: The Estate of Daymon C. Burris,* So.2d (Fla., July 20, 1978, case number 52,330). Furthermore, a putative father has the right to visitation and under certain circumstances, custody of the illegitimate child. See *Mixon v. Mize,* 198 So.2d 373 (Fla. 1 DCA 1967) and *Brown v. Bray,* 300 So.2d 668 (Fla. 1974).

In *Mixon v. Mize,* supra, a putative father brought an action against a natural mother in order to determine his rights. The trial court entered a final decree awarding the natural mother custody of the illegitimate child born to her out of wedlock, but in addition, granted the putative father visitation rights with the child. Said action was instituted by the putative father. The First District Court of Appeal of Florida ruled that:

> Although there is a paucity of judicial expression on this issue, the weight of authority in this Country, and what appears to be the sounder view, amply supports the Chancelor's ruling. The courts having occasion to pass upon this question, appear to have uniformly held that where a putative father acknowledges his relationship to an illegitimate child, manifests a genuine interest in the child's welfare and provides it with support, such father should be granted the right to visit the child at reasonable times unless such visits are shown to be detrimental to the child's welfare.

In the case at bar, the putative father was never given a hearing as to the paternity of the child, nor as to his rights to visitation with the child since the trial court determined that the putative father had no right with which to bring any action. Clearly under the dictates of *Mixon v. Mize,* supra, a putative father does in fact have the right to visitation and does in fact have a right to institute proceedings to protect his rights of visitation.

The rights of the putative father were further recognized in the case of *Brown v. Bray,* supra. In that case, a putative father challenged the constitutionality of Florida Statutes Chapter 742, "Because it denies the father of a bastard child the rights the father of a legitimate child enjoys."

The Florida Supreme Court upheld the Statute's constitutionality by reading into it certain rights belonging to the putative father:

> We do not construe Chapter 742 as precluding the Circuit Court in a proper case and upon a sufficient showing from granting the father seeking the same, similar rights of child custody as may be granted a father in a dissolution of marriage situation. We construe the language of Section 742.031 and of Section 742.06 to authorize the Court to enter such order or orders as the equity and justice of the particular matter concerning the custody and support of the subject child may require, inasmuch as a child in a Chapter 742 situation is similarly a ward of the Court as in the case of a child in a dissolution of marriage situation.

Thus the Florida Supreme Court recognizes that a putative father has a right to custody of his illegitimate child and the constitutional law mandates that, "The court shall be open to every person for redress of any injury . . ." Florida Constitution, Article I, Section 21.

This question of whether or not a putative father has a right under the United States Constitution to institute a paternity action has been considered throughout the country. For example, in *Johannesen v. Pfeiffer,* 387 A. 2d 1113 (MA. 1978), the Supreme Court of Maine was called upon to consider the issue expressly raised in the case at bar. In *Johannesen,* supra, the Maine statute gave the mother a procedural right to file a paternity suit. Although the trial court dismissed a putative father who had filed a paternity action under the Maine statute for lack of his standing, the Supreme Court of Maine recognized that the putative father had a constitutional right to file the paternity action.

It is specifically recognized that to allow only the mother the right to seek paternity is a deprivation of the putative father's constitutional rights under equal protection. *Crane v. Battle,* 307 NYS 2d 355 (1970). The putative father's constitutional right to seek a determination of paternity and to seek visitation or custody has further been recognized in *Slawek v. Stroh,* 215 NW 2d 9 (Wisc. 1974); *State ex rel. Lewis v. Lutheran Social Services of Wisconsin and Upper Michigan,* 207 NW 2d 826 (Wisc. 1973); *In Re: Lisa R.,* 119 Cal. Rptr. 475 (Calif. 1975); and *Willmott v. Decker,* 541 P. 2d 13 (Hawaii, 1975).

It must be noted that several of these decisions rest upon this Court's analysis of equal protection as enun-

ciated in *Stanley v. Illinois,* 405 US 645, 92 S. Ct. 1208, 31 L.Ed.2d 557 (1972). "It is now clear that unwed fathers have important interests in their offspring that are entitled to constitutional protection." *Johannesen,* supra. "Moreover it would be unconstitutional, to deprive a petitioner of access to the laws and his only remedy, solely because he is a male." *Crane v. Battle,* supra.

Thus, it was improper for the trial court to dismiss a cause of action by a putative father seeking to determine the paternity of his illegitimate child merely because he did not fall within the express language of Florida Statute 742.011, to wit: Proceedings may be brought by any "woman". Such a determination by the trial court is in direct contradiction to the putative father's constitutional rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Based upon the foregoing facts and case laws, the Appellant-Petitioner respectfully requests this Honorable Court to consider this case on its appellate merits or in the alternative to enter its Writ of Certiorari.

Respectfully submitted,

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